



HOW SAFE ARE “COPYRIGHT” IN CYBER SPACE: THE INDIAN INTERPRETATION

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ABSTRACT

Law is a response to a challenges; the challenge can be social, economic or technological. Copyright law is no exception to this general rule. Copyright protection, like patent protection, exist on the theory that "the public benefits from the creative activities of authors, and that the copyright monopoly is a necessary condition for such creative activities". But technological changes always created challenges to the basic principles of copyright law. An application of copyright law to digital information has become critical. Infringement of copy rights over the Internet is one of them. The purpose of my paper is to discuss the copy rights infringement over Internet with reference to Indian Scenario.

Introduction

Digital information can be accesses quickly and smoothly around the globe, copied for preservation without error, stored compactly and searched very instantly. Advent of new technologies such as networks, digital libraries, electronic publishing, software advancements, satellite communication, wireless technologies, etc. are providing real challenges for copyright regulations and information technology offers new ways disseminating variety of works. Internet and the digital revolution pose even more complex problems for copyright law. So far as Indian Act is concerned, many amendments were introduced in 1994 and 1999 to meet the problems posed by the growth of technologies and further amendments are under consideration of the Government.

Concept of Rights in Cyberspace

Since human beings are in the cyber world accompanied by machines, and cyber world happens to be the world they live in; it is possible to get in this virtual world an inter-play of all the basic rights of man called the human rights.

However, certain rights are more sought after than other rights in cyber space. This is why we are often confronted with issues related to exercise of these rights by the owners thereof. Equally confronted are we with the matters related to violation of these rights. The rights that we often hear of in the cyber space are relatively few right now; but are sure to multiply with the increase in popularity of Internet and other wonders of information technology. For the present three rights are to be noted especially in this context. The first and the foremost is the right to privacy; second the right to freedom of speech and expression; and third the intellectual property rights.¹

Copyright in Digital content

Copyright is a form of protection provided by law to the authors of 'original works of authorship' including literary, dramatic, musical, artistic, architectural and certain other intellectual works. In the digital world, every web page accessible or published in the World Wide Web is to be taken as a literary "copyrightable" work. In cyberspace, one can meet and talk to new people, read, publish, research, hear music, see video, look at art, purchase and sell things, access government documents, send e-mail, download software, and receive technical support. Cyberspace is a living organism, constantly changing, as more information is uploaded, downloaded, as more people join the pioneers of this brave new world²

The unique underlying design of a web page and its contents, links, graphics, audio, Video, html, vml, other unique markup language sequences, List of web sites compiled by an individual or organization, all other unique elements that make up the original nature of the material.³

The Impact of Technologies on Content Creation, Use and Distribution of copyright

Technological advances associated with the Internet and digitization have had profound effects on both the rewards available to creators and the costs they face in bringing works to market. The digital copying and distribution often weakness sales and reduces the revenue available to creators for a given level of legal copyright protection. On the other hand, marginal manufacturing and distribution costs have fallen drastically and in some circumstances shifted to intermediaries as digital products come to replace physical goods.

Digital Technology poses a number of challenges to copyright, identified by leading US copyright lawyer **Professor Pamela Samuelson**,⁴ as follows:

Ease of replication:

The technology used to create and view/use a digital work can be used to make multiple "perfect" copies of the work.

Transmission and multiple use:

Networked computers potentially facilitate the widespread piracy of works. The ongoing development and implementation of broadband fixed and mobile networks to deliver content-rich "multimedia" works facilitate this further.

Plasticity of digital media:

Users can easily modify, enhance or adapt works in digital form.

Equivalence of works in digital form:

All works look alike once in code, this means it is easy to combine digital works into new products such as "multimedia", This is also an aspect of convergence-the merger of media, technology and networks in areas such as the Internet, digital broadcasting, cable services and so on.

Compactness of works in digital form:

A whole library can be stored on a few CD-ROMS; this feature also assists in the creation of new works or assemblages of printed and graphic materials.

New search and link capabilities: Internet sites can be easily linked.

Is law relating to Copyright equally applicable to its form in Digital Content?

Digitization is a process of converting literary work into digital format and storing it in digital storage media. As per the Act, to produce the work in any material form including the storing of it in any medium by electronic means is the exclusive right of the copyright owner. Therefore, digitization is the exclusive right of the owner of the copyright. Digitization of a work without the permission of the copyright owner is an infringement.

Section 51 states copyright in a work is considered infringed when a person without a license from owner or registrar of copyrights or contravening conditions of a license does anything the exclusive right to do which is the right of the owner as per the Act or permits for profit a place to be used for communication of work to public where such communication constitutes infringement of copyright in the work unless he was not aware and had no reasonable ground to believe such communication will be infringement of copyright.⁵

Let us explain the copyright infringement in respect of caching, linking, framing and in-lining, mirroring, downloading, Uploading, Scanning along with the applicability of Indian Copyright Act, 1957 to deal with these issues:



Catching and Proxy Catching

Catching is storing of web pages in computers memory at user level or server level. It is the service provided on which the website is stored on automatically. It makes a copy of it and holds it accessible for the user's computer where it is stored by the web browser software either in the RAM, the hard drive or any other storage facility. Proxy catching takes places where user's service provider might keep a copy of the site in order to provide fast access to that page for the next time to one of his clients who wishes to access this site. When the author's work, the web site, is reproduced several times there may be infringing acts.⁶

Providing links

HTTP (hyper text transfer protocol) as such facilitates linking of one web site with another without the knowledge or consent of the owner of the linked website. Linking raises questions whether the link provider is liable for copyright infringement or not? This issue was considered by the English courts in *Shetland times Ltd. v. Wills*⁷. In this case one of the two online news papers had provided a link (called hyperlink) to the many stories published in the other newspaper, without the consent of the proprietor of the latter newspaper. Therefore it became easy for the online newsreaders to read the stories in other website just by "clicking" on the mouse. Moreover the headlines and the links created were also the copy of the headlines in the website of another.

It was held that the "linking" alone does not constitute infringement. Regardless of any provisions of copyright law, there is no barrier to prevent the site owners permitting others to link to their materials. Regardless of whether sites are designed for academic, commercial or personal purposes, it will be a rare site developer who does not wish to receive "visitor".

There is an argument that the materials available on the net are in the public domain since the materials available on the net are in the public domain since the creator of such work posted that work to the Internet to make it available freely, to anyone without restriction. But this argument cannot be regarded as correct as to download or to reproduce the material, one ought to obtain license (which should be in the written form) from the owner of such copyrighted material. Therefore it can be stated that unregulated copying on the internet amounts to copyright infringement. In *LFG, LCC v. Zapata Corp.*⁸ the defendant registered domain name zapte.com for carrying on business over the internet. The plaintiff is providing financial service under the service mark Zap futures. The defendant's web site is having three hyperlinks, which could connect users to other financial service website including that of plaintiff and his competitors. The plaintiff objected this hyperlink on the ground that wrong impression is created in the minds of the public because they may associate him with his competitors.

In *Washington Post Co. v. Total News Inc.* *Total news*⁹ operated a website providing links to web-sites of many news purveyors including the Washington Post, Time Cable News Network (CNN), times Mirror, Dow Jones and Reuters. By clicking on the links, the web-sites of these news purveyors were displayed in the frame of Total News. The frame contained the 'Total News' logo Total News URL and advertisements managed by Total News. The claimants brought an action against the defendant alleging copyright infringement and they got succeeded.

Mirroring

It improves service for the users by replicating a web site across various servers all over the world and make available the critical information to all the users at all time. Mirroring is the automated process of writing data on two drives simultaneously. Mirroring is used to provide redundancy, backup, multiple concurrent accesses and uninterrupted accessibility.¹⁰

Browsing

It is software driven process for searching the World Wide Web using a browser. Therefore browsing is the professional name for several methods of searching the web. These methods are usually assisted by some sort of a discovery tool and considered to be more intuitive.¹¹

Downloading

It means to receive data to a local system or computer from a remote system, or initiate such a data transfer.¹²

Uploading

It refers to the sending of data from a local system to a remote system such as a server or another client with the intent that the remote system should store a copy of the data being transferred, or the initiation of such a process. Once the unauthorized copyright material has been uploaded and made available, the next possible thing is that Internet users will download it from the internet. There is little doubt that users are liable for downloading such material without the authority of the copyright owners. However copyright owners are reluctant to bring actions against millions of individual infringers. Much of the attention has been paid to the possibility of holding liable those parties who provide the equipment or facilities used for infringing activities.¹³

*Himalaya Drug Company V. Sumit*¹⁴ restraining the Copying of a herbal database by the Italian Infringer. The plaintiff, the Himalaya Drug Company, one of the leading Ayurvedic pharmaceutical companies in India, had a database comprising 209 herbs on its website. The defendant, an Italian company, copied this whole database onto its website. Pursuant to the Delhi High Court restraining order, which was brought to the notice of the concerned Internet Service Provider (ISP) located in the US, the ISP removed the infringing content on its own accord and furnished the complete details of the infringer, who had rented space on the ISP's website. The ISP action has been promoted by the Digital Millennium Copyright Act, an American legislation that obligate ISP's to remove infringing content on notice, failing which they could be held liable.

File swapping

It is "peer to peer" transmission of digital files from one computer to another via the Internet.

Scanning

When we scan an image, we reproduce it in an electronic, digital form. With the digital Version, we can then do many things, including: store and retrieve the images to and from a digital storage disk, edit it in software programs like photoshop, compress it for Web broadcast. There scanning is a process of reproducing any data or image in electronic or digital form.¹⁵

These activities in cyber space like caching, linking, framing and in-lining, mirroring, downloading, Uploading, Scanning may result in infringement of the exclusive statutory rights of a copyright owner through following ways:

- Transmission of Copyright work from one computer system or network to another, involving temporary storage of the information.
- An unauthorized storage of such Copyright work resulting in violation of the copyright owner's exclusive right to make copies, i.e. to reproduce the copyrighted work
- Distributing the Copyright work to public thus violating the copyright owner's exclusive right of distribution.
- An appearance of a copyright image in a web browser thus infringing the copyright owner's right of public display.
- Preparing derivative works thus infringing copyright owner's exclusive right to prepare derivative works.
- An infringement of the copyright owner's exclusive right to make adaptation, (re-arrangement or alteration)

Abovementioned Internet activities infringe the following exclusive statutory rights of a copyright owner:

- Right to reproduce the copyrighted work.
- Right to fix the information in tangible form
- Right to sell, rent, lease, or otherwise distribute copies of the copyright work to the public
- Right to perform and display publicly the copyright work.
- Right to prepare derivative works based on the copyright work.

Hence, in the present form, the Copyright Act 1957, has no provisions against those who violate the copyright owner's statutory "exclusive right" (Section 14) to fix (store), reproduce, distribute, public display or perform, adaptation, when they cache, browsing, uploading, downloading, transmit any information, scan

on the internet without seeking authorization from the copyright owner. Even Section 52 of the Act, which contains provisions on fair dealing is silent on the Internet related activities like caching, browsing, uploading, downloading etc.

Moreover, by extending section 51 (a)(ii) of the Act, to include network service provider within its ambit would make the service provider liable for copyright infringement on account of its caching and mirroring activities. Its role to provide access service to download, transmit (distribute or swap files), exhibit (public display), someone else's copyrighted work would amount to copyright infringement. The immunity offered to the service providers under the said section is rather limited. As section 51(a)(ii) of the Copyright Act pertains to "...Communication of the work to the public where such communication constitutes an infringement of the copyright in the work ..." Whereas, section 79 of the Information Technology Act is silent about any infringement of the "copyright" for any third party information or data.¹⁶

Information Technology Act 2000

Copyright law gives the author of a tangible product the right to exclude others from using the finished work. There is a question, the infringement of copyright is covered under Information Technology Act 2000?

However, Under Indian law proviso to section 81 was incorporated by Information Technology (Amendment) Act, 2008 shall restrict any person from exercising any right conferred under the Copyright Act, 1957.¹⁷ But does not contain special provisions for protection of IPRs such as copyrights, trademarks, patents etc. in digital medium. This shows that where there is a violation of copyright in cyber space then author shall have all those rights which are conferred under these Acts.

How safe are "Copyright" in Cyber space: Fact or Fiction

The enforcement of the Information Technology Act is crucial for cyber security. Several rules and policies that need to be made under the Act are missing even after eight years.

It is worth noting that NASSCOM set up the Cyber Security Task Force (CSTF) in mid-2015, at the behest of PM Modi, to make recommendations for India to emerge as a supplier of cyber security services and services to the world. CSTF has engaged in deep consultations with the industry, government and academia to focus on technology, skills and education, industry, startups, R&D to arrive at policy recommendations for making this happen.

India has all the entities required for cyber security: CERT-In, NCIPC, Cyber labs, ISEA programme for education in universities, skill development under NSDC and NASSCOM/DSCI, intelligence and monitoring of networks for national security, a vibrant IT/BPO industry, JWG for PPP, and startups-now even a national cyber coordinator! But presently they do not work in a coordinated manner to secure India's cyber security. Much remains to be done.

Conclusion

The growth of Internet has created a new cyberspace for copyrights exploitation, Infringement, distribution, circulation, publication is so easy and wide in electronic environment that anything that is in digital form has greater chances of losing royalty than any other medium. But the information technology Act 2000 does not cover problems in relation to infringement of any of the Intellectual Property Rights, such as copyrights, trademarks, patents etc. This poses great challenges to the courts in India, when the problem of Cyberspace violation of copyright arises because Cyberspace is borderless. Hence the provisions of the Copyright Act are wide enough to include Cyberspace violation of the same & the Act itself provides for a wide jurisdictional powers to the courts in India to take cognizance of the case by virtue of Section 62(2) of the Act & also Section 20 of the CPC.

REFERENCES

1. Dr.J.P.Mishra, "An Introduction to Cyber law", 2nd edition, (Allahabad: Central law Publications, 2014).p.259
2. "Legal Protection for Computer Programs: a Survey and Analysis of National legislation and Case Law" by Michael S. Keplinger (document UNESCO/WIPO/GE/CCS/2).
3. Meena Amar, 'Lectures on cyber Laws', 1st ed. [Hyderabad: Asia Law House, 2011].p.71
4. Sumuelsen, "Digital Media and the Changing Face of Intellectual Property Law, Rutgers Computer and Technology Law Journal, 1990.p.323
5. Gupta & Agarwal, 'Cyber laws', 1st ed. [Allahabad: Premier Publishing Co., 2008].p.
6. C.B.Raju, "Intellectual Property Rights" 1.ed. [new Delhi: Serials publications].p.70
7. (1997) F.S.R. 604.
8. 78 FS. Supp. 2d.731, 733
9. No. 97 Civil 1190 (PKL).
10. Dr.Jyoti Rattan, "Cyber Laws & Information Technology" 4th edition, (New Delhi: Bharat Law House .Ltd.2014)p.448.
11. Ibid
12. Ibid
13. Ibid

14. The IUP Journal of Intellectual Property Rights, Vol.IX.Nos.1&2, 2010.

15. Ibid

16. section 51 (a)(ii) of the Copyright Act 1957.

17. section 81 of the Information Technology (Amendment) Act, 2008.